No. 77-1108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

LOUIS A. ANTAL,

Petitioner,

v.

W. A. ("TONY") BOYLE, GEORGE TITLER, JOHN OWENS, AND UNITED MINE WORKERS OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Petitioner, Louis A. Antal, respectfully prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on September 1, 1977.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the District of Columbia Circuit is not yet officially reported. It is appended to this Petition as Appendix A (1a-14a).

The Memorandum and Order of the United States District Court for the District of Columbia is reported at 418 F.Supp. 406 and is appended to this Petition as Appendix B (15a-26a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The decision of the United States Court of Appeals was entered on September 1, 1977. A timely petition for rehearing *en banc* was denied on ~~December~~ November 8, 1977.

QUESTION PRESENTED

Does the public policy of strict fiduciary accountability embodied in Section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 501, countenance a spendthrift provision in a union officer pension plan thwarting collection by a labor union of judgments against its former officers for large-scale breaches of fiduciary duty?

STATUTES INVOLVED

This case involves Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 501. That provision is appended as Appendix C (27a-28a).

STATEMENT OF THE CASE

This petition stems from efforts by the United Mine Workers of America to satisfy substantial judgments entered on its behalf against its former president W. A. ("Tony") Boyle and its two other former, principal officers based on adjudications that each of them breached his fiduciary duties to the Union in violation of Section 501 of the Labor-Management Reporting and Disclosure

Act (LMRDA), 29 U.S.C. § 501.[1] Principally the District Court held that Boyle and his fellow officers had illegally manipulated salary increases to Union employees to aid the financing of their 1969 re-election campaign and had improperly used Union funds to disseminate campaign propaganda through the UMW *Journal* and to purchase politically self-aggrandizing souvenirs, 91 LRRM 2549 (D.D.C. 1975), *aff'd by order*, No. 76-1254 (C.A.D.C., 1977). The Union sought to collect on the judgment by attachment of 25 percent of the monthly pension payments otherwise payable to them under the Union pension plan for retired officers and employees.[2]

Relying on a spendthrift provision in the pension plan, the respondent former officers moved that the attachments be quashed. The District Court granted the motions and on appeals by the Union and Antal, the Court of Appeals (Circuit Judges Tamm and Wilkey, Bazelon, Chief Judge, dissenting) affirmed. The majority held that since the spendthrift clause is not literally an "exculpatory provision" within Section 501, it should not be denied

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[1] This litigation was initiated December 4, 1969 as a derivative suit by Joseph A. Yablonski, shortly before his murder, and by other union members, including Petitioner Antal, who desired to remedy fiduciary breaches of the Boyle regime. Following Boyle's election defeat in 1972 and the installation of new officers, the Union obtained realignment as a party plaintiff in order that it might pursue its claims in its own right, *Weaver* v. *UMWA*, 160 U.S. App. D.C. 314, 492 F.2d 580 (1973). The judgment ultimately entered—involving the Boyle regime's politically-motivated use of Union funds in connection with their 1969 re-election campaign and otherwise—included joint and several liability of $239,993.25 and additional individual liability against Boyle of $69,870.50.

[2] 16 D.C. Code § 572 sets 25% as the maximum portion garnishable from pension or other wage payments. As the Union's most highly-paid officer, Boyle receives a monthly pension of $1,300; reduced by a quarter his pension would be $975.00. Owens, the former Secretary-Treasurer, receives a monthly pension of $1,100 which would be reduced to $825.00. Titler, the former Vice President, is now deceased.

enforcement.[3] Accordingly, the Court of Appeals held that the spendthrift provision barred attachment of any portion of the pensions in satisfaction of the Union's judgment.

Petitioner Antal, as one of the original group of courageous men who fought the corrupt Boyle regime and joined in the initiation of this derivative suit in 1969 when the Boyle-dominated Union refused to sue on the Union's behalf, has a special interest in enforcing the judgment herein so that the Union and its membership may benefit from the proceedings which he risked so much to bring. When the Court of Appeals in *Weaver*, *supra*, approved the Union's request to prosecute the litigation in its own right, Petitioner Antal contemplated—along with the Court—that the Union would litigate "vigorously", *Weaver*, 492 F.2d at 586, to reduce the matter to judgment and to see the judgment satisfied. The Union's commitment in the latter regard, however, is regrettably doubtful. In May 1976, when the matter was before the District Court, the UMWA International Executive Board directed its counsel to withdraw the attachment, and only Antal's re-entry into the case caused the Board to rescind its action and go forward. Petitioner Antal has been advised by the Union that it will not seek review of the panel decision. For that reason, pursuant to Rule 21(4) of this Court the Union is listed as a Respondent to this petition.

As a practical matter, barring attachment of the pensions will thwart satisfaction of the judgment. As their counsel will not deny in their Opposition to this Petition, Boyle has no other substantial assets subject to attachment. Thus as Chief Judge Bazelon stated, enforcement

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[3] Since Petitioner Antal and the Union never challenged the spendthrift clause as an "exculpatory provision" within § 501, but rather contended that enforcement of the clause contravenes the federal policy of fiduciary accountability embodied in the statute, the opinion of the majority disposed of a "straw man."

of the spendthrift clause would "insulat[e] . . . [Boyle and his fellow officers] from the sanctions Congress saw fit to impose for violations of § 501" (13a). Such a result would be anathema to the Congressionally-mandated policy of strict fiduciary accountability which other Courts of Appeals have found embodied in Section 501. It is for that reason, in the face of the Union's decision not to proceed, that Petitioner Antal finds it necessary to step forward and seek review.

REASONS WHY CERTIORARI SHOULD BE GRANTED

THE COURT OF APPEALS' DECISION, CONTRARY TO DECISIONS OF OTHER CIRCUIT COURTS, INTERPRETS SECTION 501 OF LMRDA INCONSISTENTLY WITH THE GOVERNING FEDERAL POLICY THAT UNION OFFICERS GUILTY OF FIDUCIARY BREACH BE HELD STRICTLY ACCOUNTABLE

The Court of Appeals in this case upheld application of a spendthrift provision to thwart garnishment of a portion of periodic pension payments from the United Mine Workers Pension Trust to former UMW officers found guilty of large-scale breaches of the § 501 fiduciary duty owed by them to the Union. In literal fashion, the court below viewed as determinative the fact that the spendthrift provision was not, in so many words, an "exculpatory provision" as described in § 501. In so holding the majority of the Court of Appeals totally ignored the practical effect of its decision which is to erode severely the federal policy of fiduciary accountability embodied in § 501. By enforcing the spendthrift provision without regard to the practical consequence of its decision, the Court of Appeals ignored decisions of other circuits which broadly disapprove *all* means—*whether direct or indirect*—by which fiduciary accountability may be subverted. *Highway Truck Drivers and Helpers Local 107*

v. *Cohen*, 284 F.2d 162 (C.A. 3, 1960), *aff'g* 182 F.Supp. 608 (E.D.Pa.); *Johnson* v. *Nelson*, 325 F.2d 646 (C.A. 8, 1963), *aff'g* 212 F.Supp. 233 (D.Minn. 1963); *United States* v. *Silverman*, 430 F.2d 106 (C.A. 2, 1970); *United States* v. *Vitale*, 489 F.2d 1367 (C.A. 2, 1974). Indeed the court below even ignored its own decisions holding that spendthrift provisions though generally valid, must be denied enforcement where "repugnant to prevailing law or public policy." *Seidenberg* v. *Seidenberg*, 96 U.S. App.D.C. 245, 225 F.2d 545, 548 (1955); *American Security and Trust Co.* v. *Utley*, 127 U.S.App.D.C. 235, 382 F.2d 451 (1967).[4]

This Court in the context of enforcing collective bargaining agreements pursuant to Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. 185, has mandated the federal courts to develop a body of federal, common law consonant with the federal policy favoring labor peace and stability through collective bargaining, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957). Although this Court has not previously had occasion to mandate the development of federal common law under Section 501 of LMRDA, the lower courts have done so, virtually from the date of LMRDA's enactment, *Highway Truck Drivers*, *supra*, 182 F.Supp. at 617; *Johnson*, *supra*, 325 F.2d at 650; 212 F.Supp. at 246-47; *Parks* v. *International Bhd. of Electrical Workers*, 314 F.2d 886, 903-04 (C.A. 4, 1963), *cert. denied*, 372 U.S. 976. Applying *Lincoln Mills* in the § 501 context, those decisions have developed a body of federal, common law consonant with the federal policy of strict and all-inclusive fiduciary accountability.

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[4] Public policy objections to the honoring of spendthrift clauses are not limited to a few fixed, traditional situations, *Utley*, *supra*, 382 F.2d at 453, *Restatement of Trusts*, 2d, § 157 Comment (a). The Court of Appeals' wooden approach was thus wrong, not only as an application of Section 501, but as a matter of traditional trust law as well.

Except for the decision by the Court below, the Courts of Appeals have uniformly followed this approach and have invalidated all means—not only the exculpatory provisions described in § 501(a)—by which fiduciary accountability would be subverted. Similar to the situation here was that in *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, *supra*—one of the earliest derivative suits under Section 501. After the initiation of suit, the Union passed a resolution authorizing use of Union funds for the defense of the officers charged with fiduciary breach. On Plaintiffs' motion, the Court entered a preliminary injunction restraining implementation of the resolution. The Court held that while the resolution—like the spendthrift clause here—was not *literally* an exculpatory provision, it was nevertheless violative of § 501 of LMRDA, 182 F.Supp. at 617-18, 620. In affirming, the Third Circuit stated that honoring the challenged resolution would be "inconsistent with the aims and purposes" of LMRDA, 284 F.2d at 164. The decision here upholding the spendthrift clause as not literally an "exculpatory provision" is directly contrary to the Third Circuit's *Highway Truck Drivers* decision and to the federal policy of strict fiduciary accountability.

Also contrary to the Court of Appeals' decision below is *Johnson* v. *Nelson*, *supra*. *Johnson* was a challenge to the refusal of defendant Local Union officers to implement a local union resolution directing payment of legal expenses incurred by the plaintiff members arising from the illegal imposition of union disciplinary penalties. The defendant local officers relied upon a directive by the executive board of the parent union, contrary to the local union resolution, instructing that the legal expenses be paid. Like the spendthrift clause here, the executive board directive in *Johnson* was not literally an exculpatory provision within § 501(a). Nevertheless, the District Court in *Johnson* struck it down as contrary to the expansive, federal policy of fiduciary accountability underlying Title

V of LMRDA, and the Eighth Circuit Court of Appeals affirmed.

The *Johnson* court's careful examination of Congress' concerns in enacting the fiduciary provisions of LMRDA contrasts vividly with the approach of the court below which disregards the federal policy embodied in § 501. The District Court (per Larson, J.), like the other courts noted above, looked to *Lincoln Mills* as a general guide for its approach to Section 501 litigation, 212 F.Supp. at 246, 297; relied upon common law to fashion federal rules for the effectuation of the overriding Congressional policy, 212 F.Supp. at 247, 297; and stressed that the federal policy of strict fiduciary accountability must determine whether particular challenged union officer actions breach the fiduciary duty, 212 F.Supp. at 246. To this end, the Court declared that actions contrary to federal policy could be held illegal even absent "specific conflict" with the express provisions of § 501. The Court concluded that the parent union directive "must be struck down" lest LMRDA policy be frustrated, 212 F.Supp. at 256. Significantly, it reached this conclusion even though the letter transmitting the directive "may have been sent in good faith," 212 F.Supp. at 255, and was possibly "no more than the hint of erosion of rights conferred by Congress. . . ." 212 F.Supp. at 297. Here instead of a "hint of erosion" the effect of the decision below will, as a practical matter, insulate Boyle and his fellow officers from the Congressionally-intended sanctions. In words obviously unheeded by the Court of Appeals in this case, the Court in *Johnson* declared: "Congress meant the remedy to be no less sophisticated than the problem—the cure to be co-extensive with the malady." 212 F.Supp. at 296.

The dissenting opinion by Chief Judge Bazelon in this case harmonizes with pertinent authority from other Courts; the highly-literalistic panel decision is set to

a different cadence. The majority below, in approving elimination of the garnishment device, showed insensitivity to the Congressional aim that the "remedy" be geared to the "problem", and that the "cure" meet the "malady". The majority focused solely on the literal terms of Section 501 with respect to exculpatory provisions and resolutions, and ignored the *Lincoln Mills* approach which other Circuit Courts have held to be appropriate for Section 501 litigation. Had it adopted the approach of *Lincoln Mills* and the other Circuits, it would have followed D.C. common law decisions such as *Utley* and *Seidenberg* and would have barred the enforcement of a spendthrift clause contrary to the public policy of Section 501. In short, the federal policy of strict fiduciary accountability underlying Section 501 would not have been frustrated as it has been in this case. Unless this Court reverses the majority of judges below, the wholesale frustration of § 501 condoned in this case will inevitably become the rule.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted and the judgment of the Court of Appeals reversed.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 76-1871

UNITED MINE WORKERS OF AMERICA, ET AL.

v.

W. A. (TONY) BOYLE, ET AL.
LOUIS A. ANTAL, APPELLANT

No. 76-1872

UNITED MINE WORKERS OF AMERICA, APPELLANT

v.

RICHARD WEAVER, ET AL.
W. A. (TONY) BOYLE, ET AL.

Appeals from the United States District Court for the District of Columbia

(Civil Action No. 3436-69)

Argued 1 June 1977

Decided 1 September 1977

Steven Jacobson for appellants in No. 76-1872. *Richard L. Trumka* was on the brief for appellant in No. 76-1872. *Joseph L. Rauh, Jr.* entered an appearance for appellant in No. 76-1871.

Robert Cadeaux for appellee, W. A. Boyle, also argued for appellee Owens.

Jo V. Morgan, Jr. and *William E. Rollow* were on the brief for appellee, The National Bank of Washington, Trustee.

J. Gordon Forester, Jr., was on the brief for appellee, John Owens.

Before BAZELON, *Chief Judge*, and TAMM and WILKEY, *Circuit Judges*.

Opinion for the Court *per curiam*.

Dissenting opinion filed by *Chief Judge* BAZELON.

PER CURIAM: We affirm the District Court on the basis of the opinion of Judge Corcoran, 418 F.Supp. 406 (D.D.C. 1976), to which reference is made for the statement of facts and the discussion of the legal issues involved. We find it necessary to write only on the point raised by the dissent, which was not discussed in Judge Corcoran's opinion, that the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501(a), represents a statement of public policy which would bar the application of the Spendthrift Trust provision of the UMWA pension fund.

We cannot interpret this provision of the statute in the same way as our dissenting colleague. The portion of section 501(a) relied on in the dissent states: "*A general exculpatory provision in the Constitution and bylaws* of such a labor organization or a *general exculpatory resolution of a governing body* purporting to relieve any such person of liability for the breach of the duties declared

by the section *shall be void as against public policy.*" (emphasis added).

We start and end by looking at the plain language of the statute. It is obvious that the spendthrift provisions of the pension trust were neither general, nor were they in the Constitution and bylaws, nor were they in the resolution of a governing body, nor were they exculpatory.

It is undeniable that the pension trust was a provision neither of the union's constitution or of its bylaws, nor was it a general resolution of the union's governing body. The pension trust is an independent entity, not part of the UMWA, whose only connection now is the continuing funding of the trust. While not bearing upon the interpretation of the statute, it may be noted that defendant Boyle at no time was a trustee of the trust itself, and that the wrongful acts committed by Boyle had no connection with the pension trust itself.

The spendthrift provisions of the pension trust are in plain language and are neither general nor exculpatory. Spendthrift provisions in pension trusts or trusts established by personal settlors are a common financial device used to ensure that the settlors' funds go where and are used for the benefit of the beneficiary he or it intends. Such a commonly used spendthrift provision is a very limited provision, and is hardly embraced within the phraseology "a general exculpatory provision". The position of our dissenting colleague might be stronger, but only slightly stronger, if the phraseology of section 501(a) had read "any exculpatory provision," or "any provision having an exculpatory effect," but no such language was used.

We say that the position of our dissenting colleague might be only slightly stronger if such language were used, because the spendthrift provision is not only spe-

cial and limited rather than "general," but in the first place it is not even "exculpatory." The American Heritage Dictionary defines "exculpatory" as "proving or tending to prove guiltless; exculpating." The basic verb "exculpate" is defined as "to clear of a charge; prove guiltless or blameless; exonerate." The meaning is traced back to the Medieval Latin "*ex*"—(removal away from), plus *culpa* (guilt or blame).

Thus to come within the language of the statute here, the spendthrift provision must purport to relieve Boyle of guilt, fault, blame, or liability. The spendthrift provision does not purport to do so, and our dissenting colleague does not claim that it does. Boyle has not been exculpated in any way by the spendthrift provision. He remains guilty, at fault, blameworthy, and liable to the UMWA for the full amount of the judgment rendered against him. Where there is guilt, fault, blame, or liability, then various remedies arise. All that the spendthrift provision of the pension trust does is void the particular *remedy* of attachment. Boyle's liability remains, for which various remedies may be invoked. Boyle remains liable, and owes the UMWA the full judgment rendered; the spendthrift provision of the trust was not designed to "exculpate" him within the plain meaning of the statute.

The English language is marvelously flexible, yet precise. Had the Congress—or the settlors of the trust—at any time desired to provide for an offset of the pension ordinarily to be paid to any beneficiary of the trust by reason of any liability, specific or general, flowing from a beneficiary to the trust, either could have said so. This they did not do, and the language employed by Congress regarding "a general exculpatory provision," specifically to be found in the constitution or bylaws or resolution of the Union, plainly does not cover the spendthrift provision of the Pension Trust. That

being so, we find no public policy, implicit or explicit, in section 501(a) which should cause this court to create another exception to the usual rule on spendthrift provisions.

Affirmed.

BAZELON, *Chief Judge, dissenting*: Appellant, the United Mine Workers of America (Union), seeks to satisfy a money judgment against appellees, former Union officers found liable in an earlier proceeding for violations of the fiduciary obligation provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 501 (1970).[1] The majority affirms the district court in refusing to permit attachment of the former officers' monthly pension payments because of a spendthrift clause in the Union pension trust agreement.[2] Since I believe enforcement of a spendthrift clause to defeat recovery under § 501 of the LMRDA is contrary to public policy, I respectfully dissent.

I.

In an earlier proceeding, the district court found that appellees W. A. ("Tony") Boyle, George Titler, and John Owens[3] had violated § 501 of the LMRDA by diverting Union funds for use in their 1969 Union reelection campaign.[4] Specifically, appellees obtained campaign funds

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[1] The judgment against appellees for violations of 29 U.S.C. § 501 (1970) is final. UMWA v. Boyle, 91 LRRM 2549 (D.D.C. 1975), *aff'd by order*, No. 76-1254 (D.C.Cir., April 12, 1977).

[2] UMWA v. Boyle, 418 F.Supp. 406 (D.D.C. 1976).

[3] At the time of the acts giving rise to liability appellees Boyle, Titler, and Owens served as International President, Vice President, and Secretary-Treasurer of the Union, respectively.

[4] 91 LRRM 2549 (D.D.C. 1975).

disguised as salary increases, and expended Union money for souvenir cigarette lighters, ball point pens, and digital clocks bearing their names and likenesses.[5] For these violations the district court found appellees jointly and severally liable to the Union for $239,993.25. The court also found appellee Boyle individually liable for $69,-870.50, representing unlawful expenditures for printing campaign propaganda and fees received for serving as the director of a Union-controlled bank.[6]

To secure satisfaction of the that judgment, the Union levied writs of attachment against the beneficial interests of Boyle, Titler, and Owens in a Union pension fund.[7] Appellees opposed the attachments, and filed motions with the district court to quash the writs. The

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[5] 29 U.S.C. § 501(a) (1970) provides in part:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

[6] The court found that in serving as a member of the Board of Directors Boyle was acting "on behalf of" the Union in terms of § 501, *see* note 5 *supra*, and therefore was required to account to the Union for the compensation he received. 91 LRRM at 2555.

[7] The Trustee, pursuant to authority conferred by paragraph 12 of the pension trust agreement, *see* note 9 *infra*, suspended 25% of appellees' periodic pension payments pending final determination of the validity of the attachments. J.A. at 31.

court recognized that absent a spendthrift clause in the trust agreement the governing provisions of the District of Columbia Code would authorize attachment of 25% of appellees' periodic pension payments.[8] But it ruled that paragraph 12 of the pension trust agreement established a valid spendthrift clause which barred attachment.[9]

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[8] 16 D.C.Code § 572 (1973) provides in pertinent part that an attachment levied upon wages due a judgment debtor becomes a lien and a continuing levy upon gross wages due or to become due for the amount specified in the attachment to the extent of

> (1) 25 per centum of [the employee-garnishee's] disposable wages that week, or
>
> (2) the amount by which his disposable wages for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) in effect at the time the wages are payable, whichever is less.

The D.C. Code defines "wages" to include "periodic payments pursuant to a pension or retirement program." 16 D.C.Code § 571(1) (1973). The "lesser" amount in the case of each of the appellees is 25% of their respective monthly pension payments.

On May 3, 1976, George Titler died, thereby mooting all questions concerning his prospective pension payments. The Union still seeks to attach 25% of Titler's death benefits under the Union pension trust. J.A. at 204.

[9] Paragraph 12 of the International Union United Mine Workers of America Pension Trust reads in relevant part as follows:

> No employee or retired employee shall have any right, title, or interest to any portion of the Pension Fund held by the Trustee, until actual payment to the retired employee by the Trustee. . . . No assignment, anticipation, pledge or encumbrance whatsoever shall be permitted and no attempts on the part of the retired employee to transfer or pledge his right to any payment or portion of the monthly pension herein provided shall be recognized by the Trustee. All pension payments shall be made directly into the hands of the retired employee and to no other person, nor shall any such monthly payments be subject to attachment or other legal process. If Court action should be brought to have said monthly pension paid to some other person, the Trustee in its discretion may suspend the monthly payments otherwise payable to said retired employee, pending final judicial determination. . . .

The Union concedes that paragraph 12 of the trust agreement creates a valid spendthrift clause,[10] but it argues here, as before the district court, that the spendthrift clause should not be enforced because it conflicts with the policy of the national labor relations laws as embodied in § 501 of the LMRDA.[11] The district court, for reasons that do not appear in its opinion, did not respond to this contention. Instead, it stated that the Union was seeking to establish a hitherto unrecognized exception for involuntary tort creditors, and rejected the Union's public policy argument on this basis.[12] In

[10] App. Br. at 7.

[11] The Union also contends that because of appellees' domination of the Union during this period they should be considered settlors of the trust, and barred from invoking the spendthrift clause on this basis. *See* American Security and Trust Co. v. Utley, 382 F.2d 451, 452 (D.C.Cir. 1967); Liberty National Bank v. Hicks, 173 F.2d 631, 634 (D.C.Cir. 1948); *Restatement of Trusts 2d* § 156 (1959). Because I believe the district court should be reversed on other grounds, I do not reach this issue.

[12] The court noted that there are few cases in any jurisdiction dealing with the rights of tort creditors to invade a spendthrift trust. But it conceded that commentators, with rare unanimity, support an exception for tort creditors, on the ground that it would be unfair to enforce a spendthrift clause against a tort victim who has no say as to who his debtor will be. *See* E. Griswold, *Spendthrift Trusts* 442-43 (2d ed. 1947); 2 A. Scott, *Trusts* 1230-31 (3d ed. 1967); Note, 57 DICK L. REV. 220 (1953); Note, 28 NOTRE DAME L. 509 (1953); Note, 17 OKL. L. REV. 235 (1964). Nevertheless, the court rejected an exception for tort creditors on the facts of this case, reasoning that the parties had an established relationship before the violations occurred and that the Union could have modified the spendthrift clause in anticipation of a violation. 418 F.Supp. at 411-12.

I find the district court's rationale for rejecting the applicability of a public policy exception for tort judgments doubtful. In view of the well-documented domination of the Union by appellees during the period in which the violations found by the district court occurred, *see* UMWA v. Boyle, 91 LRRM 2549, 2551 n.5 (D.D.C. 1975); Hodgson v. UMWA, 344 F.Supp. 17, 21 (D.D.C. 1972); Hodgson v. UMWA, 344 F.Supp. 990, 995 (D.D.C. 1972); Weaver v. UMWA, 80 LRRM 2596, 2599 (D.D.C. 1972), it is implausible to

my view, there is ample ground for finding an exception to the spendthrift clause precisely where the district court failed to look—the public policy of § 501 of the LMRDA.

II.

The decisions of this jurisdiction recognize the general validity of spendthrift trusts,[13] but also establish that spendthrift trusts will not be enforced when it is contrary to public policy to do so.[14] The district court acknowledged that there are a number of public policy exceptions to the enforceability of spendthrift clauses, and referred specifically to the four exceptions set forth in the *Restatement of Trusts* 2d § 157.[15] But the district court's opinion seems to imply that the exceptions listed in § 157 are presumptively exclusive. This was

suggest that the Union could modify the spendthrift clause in anticipation of a future judgment against appellees. It is unnecessary, however, to resolve the general question of whether this Circuit should recognize a public policy exception for involuntary tort creditors.

[13] American Security and Trust Co. v. Utley, *supra* at 452-53; Seidenberg v. Seidenberg, 225 F.2d 545, 546 (D.C.Cir. 1955).

[14] American Security and Trust Co. v. Utley, *supra*, at 453; Seidenberg v. Seidenberg, *supra*, at 547-50; Buchanan v. National Savings & Trust Co., 146 F.2d 13, 15-16 (D.C. Cir. 1944).

[15] This section reads in relevant part:

> Although a trust is a spendthrift trust . . . the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,
>
> (a) by the wife or child of the beneficiary for support, or by the wife for alimony;
>
> (b) for necessary services rendered to the beneficiary or necessary supplies furnished to him;
>
> (c) for services rendered and materials furnished which preserve or benefit the interest of the beneficiary;
>
> (d) by the United States or a State to satisfy a claim against the beneficiary.

clearly not the intention of the draftsmen of the *Restatement*. Comment (a) to § 157 expressly indicates that the draftsmen anticipated courts would recognize new public policy exceptions where warranted by the circumstances:

> The enumeration in this Section of situations in which the interest of the beneficiary of a spendthrift trust . . . can be reached is not necessarily exclusive. The interest of the beneficiary of a spendthrift trust . . . may be reached in cases other than those herein enumerated, if considerations of public policy so require.

Nor is there any suggestion in our prior decisions that public policy exceptions are limited to a few "traditional" contexts. Aside from their specific holdings, our decisions establish only a few basic guiding principles. Because "it does not necessarily follow from the general validity of spendthrift trusts that trust income is protected from all obligations," we have rejected "an absolutist 'all or nothing' approach" to the enforcement of spendthrift clauses. *American Security and Trust Co.* v. *Utley*, 382 F.2d 451, 453 (D.C.Cir. 1967). Instead, the important question in each case is whether, in light of the nature of the judgment sought to be enforced and the relationship between the judgment debtor and creditor, enforcement of the spendthrift clause would be "repugnant to prevailing law or public policy." *Seidenberg* v. *Seidenberg*, 225 F.2d 545, 548 (D.C. Cir. 1955). Applying these principles, we concluded in *Utley*, *supra*, that public policy required invasion of a spendthrift trust to satisfy a judgment for the provision of necessaries to the beneficiary; and in *Seidenberg*, *supra*, that a spendthrift trust would not bar satisfaction of a judgment against a father for child support.

Of course, spendthrift trusts should not be set aside on the basis of judicial whim or caprice. In view of the

rule of this Circuit recognizing the general validity of spendthrift trusts, we should refuse to enforce such a trust on public policy grounds only when the public policy involved is clear. "Public policy is very difficult to determine in many cases, but an act of the legislature, the branch most directly in contact with public opinion, is perhaps the most satisfactory measure of this concept." *Welch* v. *Welch*, 166 F.Supp. 539, 541 (D.D.C. 1958). We need look no further than the Act under which appellees were held liable to find a clear statement of public policy opposed to enforcement of the spendthrift clause.

Congress enacted the Labor-Management Reporting and Disclosure Act of 1959 in response to disclosures of widespread corruption and mismanagement among officials of labor organizations.[16] One of the express purposes of the Act was to insure "that labor organizations . . . and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations. . . ." 29 U.S.C. § 401(a) (1970). Section 501 was designed to achieve this goal directly. Section 501(a) adopts common law concepts of fiduciary responsibility as part of federal labor relations law, imposing a duty of trust on union officials in their handling and investment of union funds, and making it unlawful for union officials to maintain interests in conflict with those of the union.[17]

Congress provided stringent sanctions to enforce the obligations imposed by § 501(a). If a Union fails to bring suit for a violation of § 501(a), § 501(b) provides that "any member" of a labor organization may sue for

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[16] *See generally*, S. REP. No. 187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. CODE CONG. & AD. NEWS 2318; H.R. REP. No. 741, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. CODE CONG. & AD. NEWS 2424.

[17] *See* note 5 *supra*.

damages, an accounting, or other relief.[18] And § 501(c) makes certain violations of § 501 punishable by fines up to $10,000 or imprisonment for up to five years.[19] The intention of Congress in imposing these civil and criminal sanctions for violation of § 501(a) was undoubtedly to compensate labor organizations for the misdeeds of union officials who abuse their positions of trust, and to deter union officials from breaching their fiduciary duty.

Congress recognized that neither the compensatory nor the deterrent purpose of the sanctions imposed by § 501 would be adequately fulfilled if union officials who violate their fiduciary duty could insulate themselves from civil

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[18] 29 U.S.C. § 501(b) (1970) provides:

> When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

[19] 29 U.S.C. § 501(c) (1970) provides:

> Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

damage or restitutionary awards.[20] The last sentence of § 501(a) reads:

> A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for the breach of the duties declared by this section *shall be void as against public policy*. (Emphasis added.)

Because enforcing the spendthrift clause in this case would have precisely the same impact as a general exculpatory provision—insulation of the appellees from the sanctions Congress saw fit to impose for violations of § 501—I would hold that the spendthrift clause is invalid as against public policy.

Contrary to the majority's assertion, it is unnecessary to find that the spendthrift clause is a "general exculpatory" provision within the terms of § 501. Neither *Utley, supra*, nor *Seidenberg, supra*, even remotely suggests that public policy exceptions to the enforceability of spendthrift clauses must be grounded in the express language of legislative enactments. In fact, those cases relied exclusively on judicial determinations of public policy; here public policy is indicated by Congressional intent.

My conclusion that enforcement of the spendthrift clause in this case would be contrary to public policy is reinforced by considerations of equity. The Union is not seeking to satisfy a debt voluntarily contracted with its former officials but to recover Union funds unlawfully converted by these officers for their personal benefit. And the beneficial interest the Union seeks to attach is not an interest in a trust created by a third party settlor

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[20] *See* Morrissey v. Curran, 423 F.2d 393, 399 (2d Cir. 1970); Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F.Supp. 608, 617-18 (E.D.Pa.), *aff'd* 284 F.2d 162 (3d Cir. 1960).

but an interest in the Union's own pension fund designed to reward employees for their faithful years of service to the Union. Enforcing the spendthrift clause in these circumstances may result in the mockery of depriving the Union of compensation for the defalcations of its former officers while forcing the Union to continue to make full monthly pension payments to these officers.[21]

I would reverse the judgment of the district court and remand with instructions to enter judgment upon the writs of attachment.

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[21] After deduction of 25% of the amounts payable under the pension trust appellee Owens will still receive about $825 per month, and appellee Boyle about $975 per month. Thus, even if Siedenberg v. Seidenberg, *supra* at 550, restricts invasion of spendthrift trusts on public policy grounds to amounts that are reasonable in light of the purposes of the trust, I find nothing in the briefs or the record in this case to indicate that such a requirement would not be satisfied here.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil No. 3436-69

[Filed July 12, 1976]

UNITED MINE WORKERS OF AMERICA, *et al.*,
Plaintiffs,
v.
W. A. ("TONY") BOYLE, *et al.*,
Defendants.

Richard L. Trumka, United Mine Workers of America, Washington, D.C., for plaintiff UMWA.

Robert Cadeaux, Washington, D.C., for defendant W. A. ("Tony") Boyle.

J. Gordon Forester, Jr., Forester & Smith, Washington, D.C., for defendants George Titler and John Owens.

John J. Wilson, Carmody & Wilson, Washington, D.C., for The National Bank of Washington, Trustee.

MEMORANDUM AND ORDER

I. *Background*

At an earlier stage in these proceedings the Court found that the defendants herein, W. A. ("Tony") Boyle, George Titler, and John Owens, as officers of the plaintiff United Mine Workers of America (UMWA), had violated fiduciary duties imposed upon them by Section 501 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 501. Pursuant to those findings,

on December 9, 1975 a final judgment was entered in favor of UMWA against the defendants jointly and severally in the aggregate amount of $239,993.25 and against defendant Boyle individually in the additional amount of $69,870.50.[1] A motion by the defendants to alter or amend the judgment was denied on January 9, 1976. On February 6, 1976, defendant Owens noticed an appeal from the judgment of December 9, 1975. That appeal is presently pending.[2]

Each of the three defendants is a beneficiary of the International Union, UMWA Pension Trust (the "Pension Trust") which is administered by The National Bank of Washington as Trustee (the "Trustee"). For the purpose of securing satisfaction of the Court's judgments, on April 6, 1976 the UMWA levied writs of attachment against the beneficial interests of the defendants in the Pension Trust, addressed to the Trustee.[3]

The plaintiff has applied for a judgment against the assets of the defendants held by the Trustee, as a continuing levy equal to 25 percent of their monthly pension payments;[4] and the Trustee, exercising a discretionary

[1] The Union funds involved in the judgments were other than those of the Pension Trust, *infra*.

[2] The effect of this Court's judgment has not been stayed pending resolution of defendant Owens' appeal. *Cf.* Fed. R. Civ. P. 62; Fed. R. App. P. 8.

[3] On April 13, 1976, the Trustee responded to interrogatories which had been filed with the writs of attachment and revealed that each of the defendants was then receiving benefits under the Pension Trust—defendant Boyle in the amount of $1,300 per month and defendants Titler and Owens each in the amount of $1,100 per month.

[4] 16 D.C. Code § 572 provides, in pertinent part, that an attachment levied upon "wages due a judgment debtor" becomes a lien and continuing levy upon gross wages due or to become due for the amount specified in the attachment to the extent of 25 percent of the judgment debtor's "disposable wages" for that week. The Code defines "wages" to include "periodic payments pursuant to a pension or retirement program;" and "disposable wages" means that portion of individual earnings remaining after the "deduction from those earnings of any amounts required by law to be withheld" 16 D.C. Code § 571(1) & (2). However, the aforementioned sections apply in the present case if, and only to the extent that, the "spendthrift provision" of the Pension Trust does not constitute a bar to attachment or garnishment. *See* discussion, *infra*.

power accorded under the trust instrument, has suspended that percentage of the monthly payments due the defendants under the Pension Trust pending a final determination of the UMWA's right to execution upon the writs.[5] The defendants have moved to quash the writs of attachment. The Trustee has entered an appearance as garnishee and fiduciary in order to defend the Pension Trust. *See* 16 D.C. Code § 554.

II. *The Nature of the Pension Trust*

Since the principal contentions advanced in support of and in opposition to the various pending motions involve the interpretation and ultimate effect of Paragraph 12 of the Pension Trust Indenture, *as amended*, (the "Indenture"), the Court must determine at the outset whether or not that provision creates a valid spendthrift trust. Paragraph 12 states, in pertinent part,

> No employee or retired employee shall have any right, title, or interest to any portion of the Pension Fund held by the Trustee, until actual payment to the retired employee by the Trustee. No assignment, anticipation, pledge or encumbrance whatsoever shall be permitted and no attempts on the part of the retired employee to transfer or pledge his right to any

[5] The Pension Trust Indenture, *as amended*, provides at paragraph 12, *inter alia*, that

> [i]f Court action should be brought to have said monthly pension paid to some other person, the Trustee in its discretion may suspend the monthly payments otherwise payable to said retired employee, pending final judicial determination. . . .

> payment or portion of the monthly pension herein provided shall be recognized by the Trustee. All pension payments shall be made directly into the hands of the retired employee and to no other person, nor shall any such monthly payments be subject to attachment or other legal process (Plaintiff's Exh. 1).

Although a small number of states[6] adhere to the so-called "English Rule" that spendthrift trusts are invalid to the extent that they purport to restrain voluntary and involuntary alienation of the beneficiary's interest, the general validity of such trusts is today recognized in a majority of jurisdictions,[7] either by statute or, as in the District of Columbia, by judicial decision. *See Fearson* v. *Dunlop*, 21 D.C. 236 (1892); *King* v *Shelton*, 36 App. D.C. 1 (1910), *aff'd sub nom., Shelton* v. *King*, 229 U.S. 90 (1913); *Morrow* v. *Apple*, 58 App. D.C. 171, 26 F.2d 543 (1928); *Ridgeway* v. *Woodward*, 64 App. D.C. 399, 78 F.2d 878, *cert. denied*, 296 U.S. 575 (1935); *Buchanan* v. *National Savings and Trust Co.*, 79 U.S App. D.C. 278, 146 F.2d 13 (1944); *Liberty National Bank* v. *Hicks*, 84 U.S. App. D.C. 198, 173 F.2d 631 (1948); *Seidenberg* v. *Seidenberg*, 96 U.S. App. D.C. 245, 225 F.2d 545 (1955); *American Security and Trust Co.* v. *Utley*, 127 U.S. App. D.C. 235, 382 F.2d 451 (1967).

Whether a valid spendthrift trust has been created in a particular instance is an issue controlled by the intent of the settlor (or trustor) as manifested in the language actually employed—"no special form of words is necessary." *Morrow* v. *Apple*, *supra*, 58 App. D.C. at 172; 26

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[6] *I.e.*, Rhode Island, Ohio, Kentucky, and New Hampshire.

[7] *See generally* Bogert, Trusts and Trustees § 222 (2d ed. 1965) [hereinafter "Bogert"]; 76 Am. Jur. 2d Trusts § 153 *et seq.*; Powell, 4 Real Property ¶ 557 (1975) [hereinafter "Powell"]; Scott, II Trusts § 152.1 (3d ed. 1967) [hereinafter "Scott"]; Griswold, Spendthrift Trusts § 53 *et. seq.* (2d ed. 1947) [hereinafter "Griswold"]; Annot., 119 ALR 19 (1939) supplemented by 34 ALR 2d 1335 (1948).

F.2d at 544. Thus, a trust which by its terms imposes "a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary" is a spendthrift trust. *Restatement (Second) of Trusts* § 156 (2) (1959) [hereinafter "Restatement"].

Applying the foregoing legal principles to the terms of paragraph 12 of the Trust Indenture, we conclude that the settlor did in fact create a valid and enforceable spendthrift trust. From the unequivocal language used the desire to impose an absolute restraint upon the voluntary and involuntary alienation of the beneficiary's equitable interest is evident. A retired employee-beneficiary has no right, title or interest in any portion of a monthly pension payment until an actual disbursement to him has occurred. The Trustee is expressly directed to make all payments to the beneficiary and any attempt by a retired employee to transfer or pledge any monthly payment, or portion thereof, is declared of no effect. Moreover, it is explicitly stated that pension trust payments shall not be "subject to attachment or other legal process."

However, where a spendthrift trust has been created, it does not inexorably follow that its terms constitute an absolute bar to the lawful claims of all classes of creditors. For, as the Court of Appeals in *American Security and Trust Co.* v. *Utley*, *supra*, noted:

> We have long recognized the validity of the so-called spendthrift trust, but not without limitation. The historical purpose of the settlor or testator in creating a trust, the income of which was protected from invasion, was to protect the interests of the beneficiary. This purpose has been held to render the income totally immune from claims . . . We see no reason for an absolutist "all or nothing" approach. See, e.g., Shelley v. Shelley, 223 Or. 328, 334, 354 P.2d 282, 285 (1960). Traditionally, in the absence of a stat-

ute, several distinct classes of claimants have been permitted to invade the beneficiary's interest. See Restatement, supra, at § 157. (Footnotes omitted). 127 U.S. App. D.C. at 236-37, 382 F.2d at 452-53.

The UMWA asserts an exception. It contends that even if paragraph 12, *supra*, of the Trust Indenture imposes an otherwise valid restraint upon voluntary and involuntary alienation of the defendants' beneficial interests, considerations of public policy militate against application of its prohibitory effect in the circumstances at hand, *viz.*: (1) "self dealing" by these defendants in the creation and subsequent amendment of the Pension Trust, and (2) the tortious nature of defendants' conduct underlying the Court's final judgment. We address each of those contentions separately.

A. *Self-Dealing*

Even in those jurisdictions which regard spendthrift trusts as generally enforceable, it is acknowledged that "one cannot settle upon himself a spendthrift or other protective trust, or purchase such a trust from another, which will be effective to protect either the income or the corpus against the claims of his creditors, or to free it from his own power of alienation", 76 Am. Jur. 2d *Trusts* § 168; *see Shelton* v. *King, supra; Liberty National Bank* v. *Hicks, supra; American Security and Trust Co.* v. *Utley, supra; Restatement, supra* at § 156; *Scott, supra* at§ 156; *Bogert, supra* at § 223; *Annot.*, 34 ALR 2d 1335 (1954). This rule has application not only to those "who make a direct conveyance to a trustee in trust for themselves," but also to "persons who procure the creation of trusts for their benefit". *Bogert, supra* at § 223.

The defendants herein clearly do not fall within the category of direct settlors since they have made no "direct conveyance" to the Trustee. From its inception, the Pension Trust has been non-contributory and a gratuity

by the UMWA to its former employees. However, it is the plaintiff's contention that in the creation and amendment of the Trust Indenture, the defendants, as former UMWA employees and/or officers had it within their power and discretion to exclude themselves as Pension Trust beneficiaries and, in failing to do so, the defendants became indirect settlors of the Trust.

We have some difficulty perceiving the logic of plaintiff's novel arguments in this regard. But assuming *arguendo* that in certain situations tacit ratification through inaction might transform a beneficiary into spendthrift settlor, careful examination of the record before the Court leads to the conclusion that the UMWA's contentions are factually untenable.

On December 29, 1959, pursuant to an authorizing resolution of the UMWA International Executive Board, the Pension Trust Indenture was executed by and between the International Union, UMWA as "Trustor" and The National Bank of Washington as "Trustee." It was created to provide retirement income to former employees of the International Union and those of UMWA Districts 1 through 31 (Plaintiff's Exh. 1, par. 8, *et seq.*). The document was signed, on behalf of the International Union by its then president John L. Lewis, vice president Thomas Kennedy, and secretary-treasurer John Owens. The spendthrift provision, *supra*, was included at paragraph 12 and has remained unaltered through five subsequent amendments of the basic document. Each amendment bears the signatures of two or more of the defendants as UMWA International officers, but only the two most recent were endorsed by all three of the defendants herein.

Standing alone, the signature of defendant Owens on the original document and those of two or more of the defendants on each of the five amendments constitute *prima facie* evidence of nothing more than the fact that

unions act through their officers. Plaintiff has presented no proof to rebut the presumption that these documents, which, on their face, bear every appearance of regularity and validity were, in fact, duly authorized by the UMWA International Executive Board. The record is devoid of any showing, for example, that the trust or its amendments resulted from undue influence or ultra vires activity by the defendants or that the final content of the documents was other than that which had been authorized.

In short, the UMWA has proffered no evidence which would permit the inference that defendants Boyle, Titler and Owens procured creation of or amendment to the UMWA Pension Trust for their personal benefit. Consequently, we are unable to reach any conclusion but that the exclusive settlor of the Pension Trust was the Union itself. In this respect, at least, the defendants occupy the same status with respect to the trust as any of its other beneficiaries.

B. *Public Policy and Tort Creditors*

As we have previously noted, in most situations the courts of this jurisdiction have given effect to spendthrift provisions immunizing the beneficiary's interest from claims of his creditors. Nonetheless, on public policy grounds, certain narrowly delineated classes of creditors have been excepted from application of the spendthrift doctrine and permitted to "reach the interest of the beneficiary, notwithstanding an express direction to the contrary in the trust instrument." *Bogert, supra* at § 224; *see American Security and Trust Co.* v. *Utley, supra,* [and cases cited therein]. The commonly recognized public policy exceptions to the spendthrift trust doctrine are set forth at Section 157 of the *Restatement, supra*:

> . . . the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,

> (a) by the wife or child of the beneficiary for support, or by the wife for alimony;
>
> (b) for necessary services rendered to the beneficiary or necessary supplies furnished to him;
>
> (c) for services rendered and materials furnished which preserve or benefit the interest of the beneficiary;
>
> (d) by the United States or a State to satisfy a claim against the beneficiary.

See also Scott, supra at § 157 *et seq.; Griswold, supra* at § 362 *et seq.; Bogert, supra* at § 227; 76 Am. Jur. 2d *Trusts* § 175 *et seq.; Annot.*, 174 ALR 310 (1948).

The plaintiff has not attempted to characterize any of the present claims as being emcompassed within the purview of these "traditional" exceptions—and clearly they are not. Instead, the UMWA has asked the Court to carve out a new and heretofore unrecognized exception for claimants who have become involuntary tort creditors.

This is a question of first impression in the District of Columbia and little guidance can be derived from the few reported decisions in other jurisdictions.

In a late nineteenth century decision, *Thackara* v. *Mintzer*, 100 Pa. 151, 154 (1882), there is dictum to the effect that a spendthrift clause constitutes an absolute bar to attachment "[w]hether the judgment be for a breach of contract or for a tort." Although two later lower court holdings in Pennsylvania[8] are in accord, recent trends in the law of spendthrift trusts cast significant doubt upon the viability of the *Thackara* approach. *See Scott, supra* at § 157.5; *Griswold, supra* at § 365, n. 86; *Note, Trusts: Tort Claims as an Exception to the Spend-*

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[8] Wright's Estate, 12 Pa. Dist. Rep. 321 (1903); Davis v. Harrison, 3 Pa. D. & C. 481 (1923).

thrift Trust Doctrine, 17 *Okla. L. Rev.* 235, 236 (1964); *Note, Attachability of a Beneficiary's Interest in Satisfaction of a Tort Claim*, 28 *Notre Dame L.* 509 (1953); *Note, Tort Liability of the Beneficiary of a Spendthrift Trust*, 57 *Dickinson L. Rev.* 220, 221-22 (1953).

In the only other reported decision on point, *Kirk* v. *Kirk*, 254 Ore. 44, 456 P.2d 1009 (Sup. Ct. 1969), an Oregon court summarily rejected the plaintiff's request for attachment of the beneficiary's interest in a spendthrift trust based upon a judgment for tort.[9]

Notwithstanding the absence of case authority, a tort creditor exception has been suggested by a number of commentators and incorporated in the statutes of at least one state.[10] *See e.g.*, Griswold, *Reaching the Interest of a Beneficiary of a Spendthrift Trust*, 43 Harv. L. Rev. 63 (1929); *Griswold, supra* at § 365 and § 565 [model statute]; *Scott, supra* at § 157.5; *Bogert, supra* at § 224; *Note*, 17 *Okla. L. Rev.* 235 (1964); *Note*, 28 *Notre Dame L.* 509 (1953); *Note, Dickinson L. Rev.* 220 (1953). Also noteworthy is Comment a of Section 157 of the *Restatement, supra*, which acknowledges that "it is possible that a person who has a claim in tort against the beneficiary of a spendthrift trust may be able to reach his interest under the trust." [11]

The compelling public policy considerations weighing in favor of such an exception have been articulated by Professor Scott, as follows:

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[9] *See* Scott, *supra* at § 157.5, n. 1 (1975 supp.).

[10] See La. Rev. Stat. § 9: 2005 [patterned after the model spendthrift trust statute proposed by Dean Griswold].

[11] According to Professor Scott, "[i]n the absence of authority it was felt by those who were responsible for the preparation of the Restatement of Trusts that no categorical statement could be made on the question." Scott, *supra* at § 157.5.

> In many of the cases in which it has been held that by the terms of the trust the interest of a beneficiary may be put beyond the reach of his creditors, the courts have laid some stress on the fact that the creditors had only themselves to blame for extending credit to a person whose interest under the trust had been put beyond their reach. The courts have said that before extending credit they could have ascertained the extent and character of the debtor's resources. Certainly, the situation of a tort creditor is quite different from that of a contract creditor. A man who is about to be knocked down by an automobile has no opportunity to investigate the credit of the driver of the automobile, and has no opportunity to avoid being injured no matter what the resources of the driver may be.

While it can scarcely be denied that there is something shocking in the notion that a settlor may be permitted to immure a beneficiary's interest from the lawful claims of third-party tort creditors by the device of a spendthrift trust, we believe that the considerations are different in a case, such as this, in which the tort victim and trust settlor are one and the same person.

Unlike the hypothetical third-party tort victim, a settlor can preserve his rights against the beneficiary's interest in the trust by circumspection in drafting the trust instrument. In anticipation of existing and foreseeable future obligations, the settlor is at liberty to include or exclude from the trust agreement such terms and conditions as he may deem appropriate, even to deleting a spendthrift clause in its entirety. So here, unlike the third party tort creditor, the UMWA, as settlor of the Pension Trust, could easily have guaranteed the availability of the defendants' beneficial interests for purposes of satisfying a judgment in its favor based upon a tort committed by the beneficiary against the union and un-

related to duties under the Trust. But the UMWA chose to do otherwise.

In the original Trust Indenture and through its subsequent amendments, the absolute, restrictive language of paragraph 12 was retained. We need look no further than its terms to ascertain the plaintiff's clear intention that no monthly pension payment, or portion thereof, should be "subject to attachment or other legal process," including attachments levied by the UMWA itself. Under such circumstances, the Court is not persuaded that the terms of the Pension Trust Indenture should be subject to *ex post facto* judicial amendment to relieve the plaintiff of its conscious and voluntary commitment thereunder.[12]

III. *Order*

It is, accordingly, by the Court this 12th day of July, 1976,

ORDERED that plaintiff's application for judgment upon writs of attachment should be, and the same is hereby, denied. And it is further

ORDERED that defendants' motion to quash the writs of attachments should be, and the same are hereby, granted.

/s/ Howard F. Corcoran
Judge

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[12] Nothing in this decision in any manner implies that the plaintiff is not justly entitled to the full amount of compensatory damages which we have previously awarded. The UMWA may levy additional attachments on other assets of the defendants, as authorized by law. However, this Court is of the firm opinion that the self-imposed limitation of the Pension Trust's spendthrift clause prohibits the UMWA from obtaining a judgment upon the defendants' monthly pension payments while in the hands of the Trustee. We express no opinion on the propriety of attachments after pension payments have been disbursed to the defendants. Nor are we here concerned with claims against death benefits which may become payable to the estates or beneficiaries of the defendants. These issues are not before the Court at this juncture.

APPENDIX C

Fiduciary Responsibility of Officers of Labor Organizations (29 U.S.C. 501)

SEC. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer,

agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

No. 77-1108

IN THE

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OCTOBER TERM, 1977

LOUIS A. ANTAL,

Petitioner,

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Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

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BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

The Respondent, John Owens, respectfully opposes the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit dated September 1, 1977.

QUESTION PRESENTED

The Petitioner has stated the question in terms of a "union officer pension plan". This is a mis-statement in that the beneficiaries of the pension trust agreement in-

clude all employees of the international Union and the employees of all thirty-one districts. The pertinent provision in the indenture states as follows:

> "8. . . . The beneficiaries of this Trust herein sometimes called 'employees', shall be every regular full-time employee, excluding temporary or part time employees of the Trustor, and including employees of its Districts numbered one through thirty-one, inclusive, but excluding District Number 50." [1]

Therefore, the "Question Presented" should be:

Does the public policy of strict fiduciary accountability embodied in Section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 501, countenance a spendthrift provision in a Union employee pension trust agreement thwarting collection by a labor union of judgments against its former officers for large-scale breaches of fiduciary duty?

STATEMENT OF THE CASE

Petitioner's statement of the case is essentially correct except in two significant points.

I. Petitioner Antal Has No Standing.

The sole Petitioner in this case was one of forty-two original derivative plaintiffs who filed a complaint in 1969. Thereafter, when the individual defendant officers were defeated, the United States Court of Appeals for the District of Columbia Circuit permitted the realignment of the parties with the United Mine Workers becoming the plaintiff rather than the nominal defendant and in a footnote to that Opinion stated:

> "In view of the realignment of the U.M.W.A. as party-plaintiff, and with particular regard to the

[1] The entire text is set forth in the Joint Appendix, page 50. See also, Joint Appendix 69, "The Pension Trust Agreement".

> withdrawal by the U.M.W.A.'s house counsel of their appearance on behalf of the plaintiff-appellees and counsel's current representation of the U.M.W.A. in the action, it is our understanding that the plaintiff-appellees will move the District Court for leave to be dropped as party-plaintiff. *See Lazar* v. *Merchants' Nat'l Properties, Inc.*, 22 A.D.2d 253, 254 N.Y.S.2d 712, (Supreme Ct. 1964)."
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> *Weaver* v. *UMWA, et al.*, 160 U.S.App.D.C. 314, 492 F.2d 580 (1973), footnote 35.

This understanding was not realized, for on June 7, 1974 the caption was amended but the individual plaintiffs remained on the caption in error.

After judgment was rendered against the three officers, the defendants moved to amend the judgment to indicate correctly that the judgment was on behalf of the Union alone. This motion was denied by the District Court on June 16, 1976 upon the grounds, *inter alia*, that an appeal was pending and the "Court of Appeals has not granted leave to correct our memorandum and order . . .".[2]

The lack of standing on the part of Petitioner becomes crucial, for as asserted in the Petition, "Petitioner Antal has been advised by the Union that it will not seek review of the panel decision." [3] Yet, the Union is the judgment creditor, seeking to satisfy its judgment through the attachment of a trust wherein it is the grantor. The Petitioner is neither and has no standing before this Court.

II. Barring Attachment, the Judgment Will Not Be Satisfied.

Petitioner exceeds the confines of the Record by his assertion that, ". . . barring attachment of the pension will thwart satisfaction of the judgment." [4]

[2] Order filed June 16, 1976, Corcoran, J.

[3] Petition for Certiorari, page 4.

[4] Petition for Certiorari, page 4.

There is no evidence in the Record to support this statement, particularly with regard to the Respondent Owens. In fact, as the District Court pointed out, "The U.M.W.A. may levy additional attachments on other assets of the Defendants, as authorized by law . . . We express no opinion on the propriety of attachments after pension payments have been disbursed to the defendants . . ." [5]

It is true that Chief Judge Bazelon makes the same contention in the Dissenting Opinion; [6] however, there is nothing in the record to support the view of the Petitioner or the dissent.

ARGUMENT

Petitioner relies principally upon *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, 284 F.2d 162 (3d Cir. 1960) and *Johnson* v. *Nelson*, 325 F.2d 646 (8th Cir. 1963) as being inconsistent with the D.C. Circuit's Opinion in the instant case. Petitioner is over-reaching in his attempt to establish a division among the circuit courts.

Highway Truck Drivers and Helpers v. *Cohen, supra*, was a suit brought pursuant to 29 U.S.C. 501 and the Defendant officers were using Union funds to pay legal fees for their personal defense. The injunction against the practice was upheld. Obviously, such practice was "inconsistent with the aims and purposes of the Labor-Management Reporting & Disclosure Act." 284 F.2d 162, 164.

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[5] Footnote 12, Memorandum & Order, July 12, 1976, Corcoran, J. page 26A, Appendix to the Petition for Certiorari.

[6] "Because enforcing the spendthrift trust in this case would have precisely the same impact as a general exculpatory provision—insulation of the Appellees from the sanctions Congress saw fit to impose for violation of § 501—. . ." Dissenting Opinion, Appendix to Petition for Certiorari, page 13A.

Johnson v. *Nelson, supra*, also involved the payment of legal expenses arising out of a Union disciplinary action and the Executive Board of the national Union directed that these expenses be paid. This was held contrary to the fiduciary responsibility arising under § 501 of the Act.

These holdings are far removed from the view which Petitioner would seek to impress upon the spendthrift trust. The results would require this Court to legislate an entirely new provision to § 501(a) of Title 29. The provision reads as follows:

> ". . . A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

The pension trust which was the subject of this attachment was established in 1959 under the leadership of John L. Lewis to provide retirement benefits for *all* Union employees. The settlor is the United Mine Workers of America. The anomaly is that the settlor has now become the creditor and the individual Petitioner would require that the settlor be permitted to attach the funds which it has provided for the benefit of all employees, in spite of the anti-garnishment provisions which the Union inserted in the original indenture in 1959. Such contemplated action must also be considered in the light of the political upheaval which has taken place within the Union. The former officers have been defeated and the new leadership would attempt to reduce their pensions by nullifying the language in this trust. Such efforts must fail, unless it were shown that the pension, with its spendthrift provision, was established solely for benefit of the ousted officers in an effort to frustrate the judgment.

After defining the term "exculpatory", the Circuit Court stated:

"Thus to come within the language of the statute here, the spendthrift provision must purport to relieve Boyle of guilt, fault, blame or liability. The spendthrift provision does not purport to do so, and our dissenting colleague does not claim that it does. Boyle has not been exculpated in any way by the spendthrift provision. He remains guilty, at fault, blameworthy, and liable to the UMWA for the full amount of the judgment rendered against him.

* * * *

"The English language is marvelously flexible yet precise. Had the Congress—or the settlors of the trust—at any time desired to provide for an offset of the pension ordinarily to be paid to any beneficiary of the trust by reason of any liability, specific or general, flowing from a beneficiary to the trust, either could have said so. This they did not do, . . ." *UMWA* v. *Boyle, et al.*, No. 76-1871 (D.C. Cir. 1977).[7]

The legislative history of the Labor Management Reporting and Disclosure Act[8] confirms this precise view of the English language. The Committee Report states that:

> ". . . the Committee bill also explicitly invalidates any general provision in a union constitution or bylaws purporting to excuse union officials from breaches of trust . . ." 2 U.S. Code, Congressional and Administrative News 2318, 2480 (1959).

This is an *explicit* provision in the Act which prohibits exculpatory provisions in constitutions and bylaws. The spendthrift provision is neither exculpatory nor is a trust included in the explicit provision. Petitioner would ask this Court to rewrite the statute.

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[7] Appendix to Petition for Certiorari, page 4a.

[8] 29 U.S.C. 501.

It is well established that a spendthrift trust is not totally immune from the claims of creditors. There are valid exceptions, but the Petitioner here would ask this Court to fashion a new exception which has never been proposed before. The recognized exceptions to the enforceability of the spendthrift provision are set forth in the *Restatement of Trusts*, 2d, § 157 (1959 Ed.). See also, Bogert, *Trusts and Trustees*, § 227, 2d Ed. 1965); Scott, II, *Trusts*, § 157 (3d Ed. 1967); Griswold, *Spendthrift Trusts*, § 362 (2d Ed. 1947).

The most recent case in the District of Columbia is *American Security and Trust Co.* v. *Utley*, 127 U.S.App. D.C. 235, 382 F.2d 451 (D.C. Cir. 1967). The opinion, written by Chief Justice Burger, then a circuit judge, stated that:

> "We have long recognized the validity of the so-called spendthrift trust, but not without limitations. The historical purpose of a settlor or trustor in creating a trust, the income of which was protected from invasion, was to protect the interest of the beneficiary." 382 F.2d at 452.

The invasions of a spendthrift provision have been limited in the District of Columbia and generally do not exceed those as set forth in the *Restatement, supra.* See *Seidenberg* v. *Seidenberg*, 96 U.S.App.D.C. 245, 225 F.2d 545 (1955); *Liberty Nat'l Bank* v. *Hicks*, 84 U.S.App. D.C. 198, 173 F.2d 631 (1948); *Buchanan* v. *Nat'l Savings and Trust Co.*, 79 U.S.App.D.C. 278, 146 F.2d 13 (1944); *Morrow* v. *Apple*, 58 App.D.C. 171, 26 F.2d 543 (D.C.Cir. 1928).

In *Liberty Nat'l Bank* v. *Hicks*, *supra*, the settlor included a spendthrift provision in a trust established pursuant to a property settlement agreement prior to a divorce. Subsequently, upon re-marriage and the birth of a child, the settlor sought to revoke the trust in order to obtain the corpus for the benefit of his new family.

The court acknowledged the proposition that a spendthrift provision established by the settlor in favor of himself as beneficiary is void particularly when creditors seek to invade the provision. However, the court would not permit the settlor to invade the provision for his own benefit, with the emphasis being on the rights of the innocent beneficiary.

Here the Petitioner would seek authority for the settlor to invade the spendthrift provision which it has established, the invasion being for its own benefit. The rights of the innocent beneficiaries of the Union's pension trust, both present and future, must be considered. The rights of virtually thousands of employees of the United Mine Workers could be affected if this spendthrift provision is invaded.

CONCLUSION

It is therefore submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

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No. 77-1108

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

LOUIS A. ANTAL,
Petitioner,

v.

W. A. ("TONY") BOYLE, GEORGE TITLER, JOHN OWENS, AND UNITED MINE WORKERS OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONER'S REPLY TO BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

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The question posed by the Petition is whether the public policy of strict fiduciary accountability embodied in Section 501 of LMRDA will countenance a spendthrift provision in a union officer pension plan thwarting collection by a labor union of judgments against its former officers for large-scale breaches of fiduciary duty. Petitioner maintains that so strong a public policy cannot be so easily frustrated and that the majority decision of the Court of Appeals in this matter is contrary to LMRDA

as interpreted by other federal appellate courts. A Brief in Opposition has been filed by Respondent John Owens, the Union's former Secretary-Treasurer, to which only a short reply is required.[1]

1. Respondent Owens' assertion that Petitioner Antal lacks standing to bring this matter before the Court is without substance. Petitioner Antal was one of the original derivative plaintiffs who initiated these proceedings seeking to remedy the large-scale fiduciary breaches perpetrated by Respondent Boyle and his fellow officers, including Respondent Owens. Following the election defeat of these former officers, the Union assumed the posture of a plaintiff in these proceedings representing that it would carry out the responsibility for seeing the matter through. Regardless of the Union's realignment, Petitioner Antal remained a party to these proceedings in order to assure that the claims of fiduciary breach would be litigated to judgment and that satisfactory steps would be taken to assure that collection would occur.[2] Congress specifically approved such participation in § 501(b) by providing for the derivative conduct of proceedings involving union officer breaches of fiduciary duty where the union fails to prosecute the action. To bar Petitioner Antal's participation—especially now that the Union is

[1] Notably, no response has been submitted by the Union's former President, W.A. ("Tony") Boyle, who is the subject of the largest judgment as the primary defalcating fiduciary, nor by the other respondents.

[2] Counsel for Petitioner Antal and the other derivative plaintiffs never represented to the Court of Appeals incident to the proceedings in *Weaver* v. *UMWA*, 160 U.S. App. D.C. 314, 492 F.2d 580 CADC, 1973), that they would move to withdraw as parties incident to the Union's realignment as a plaintiff. Following the Union's realignment pursuant to the Court of Appeals' decision, Respondent Owens and his fellow defendants failed to contest the right of Petitioner Antal to remain as a derivative plaintiff for more than two years until after the entry of judgment on the merits, after which the District Court rejected their post-judgment motion as inappropriate under Rule 60(a), F.R.C.P.

not seeking review of the Court of Appeals' rejection of its judgment collection efforts—cannot be reconciled with Section 501.

2. Respondent Owens objects to the statement in the Petition that barring attachment of Respondents' pensions will, as stated by Chief Judge Bazelon in dissent, thwart satisfaction of the Union's judgment. None of the Respondents have denied that this will be the case. Respondent Owens artfully asserts a lack of record evidence in support of the proposition, but does not deny it or identify other assets on which the judgment could be executed. As noted above, Respondent Boyle has made no response whatever.

3. As set forth in the Petition, the Court of Appeals' decision is contrary to *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, 284 F.2d 162 (C.A. 3, 1960), aff'g 182 F.Supp. 608 (E.D.Pa.) and *Johnson* v. *Nelson*, 325 F.2d 646 (C.A. 8, 1963), aff'g 212 F.Supp. 233 (D. Minn. 1963) and other decisions of the Second Circuit (see Petition pp. 5-6). Although Respondent Owens purports to distinguish *Highway Truck Drivers* and *Johnson*, he has completely ignored the portions of those opinions relevant here. Those decisions represent judicial disapproval of union action undermining strict fiduciary accountability whether or not such action is literally in the form of a "general exculpatory provision in the constitution and by-laws of . . . a labor organization or a general exculpatory resolution of a governing body . . ." In *Highway Truck Drivers*, for example, the Court refused to uphold a resolution for payment of legal expenses of officers accused of fiduciary breach. Even though the resolution was not literally "exculpatory" within § 501, the Court nevertheless held such payments void under the overriding LMRDA policy of strict fiduciary accountability.

4. After purporting to distinguish *Highway Truck Drivers* and *Johnson*, Respondent Owens (Opposition, pp.

5-6) then essentially repeats the argument of the majority of the Court below that the spendthrift provision here is not literally an exculpatory provision proscribed by Section 501. However, as we stated in our Petition (p. 4 n. 3), that argument is responsive to a straw man which has never been asserted. Instead of challenging the clause as an "exculpatory" provision within Section 501, the Union and Petitioner Antal have contended that enforcement of the clause contravenes the Federal policy of fiduciary accountability embodied in the statute.[3]

It is an established principle of trust law that spendthrift provisions will not be honored where their enforcement would be contrary to public policy. *American Security and Trust Co.* v. *Utley*, 127 U.S. App. D.C. 235, 382 F.2d 451, 453 (1967) (Burger, J.) The situations in which spendthrift provisions have been denied enforcement on public policy grounds have evolved on a case-by-case basis. In this case, where substantial judgments have been entered against the Union's former officers for large-scale fiduciary breach, this Court must assure that Congress' "plain intention . . . to hold officers and employees strictly responsible as fiduciaries . . . not be subverted by the use of indirect methods." *United States* v. *Silverman*, 430 F.2d 106, 113 (C.A. 2, 1974). Otherwise the frustration of § 501 which occurred in this case will become the general rule.

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[3] Respondent Owens' suggestion (Opposition p. 8) that Petitioner seeks authority for the Union to invade the spendthrift provision for its own benefit to the detriment of innocent beneficiaries of the pension trust is fanciful. The limited exception sought to correct the harm done the Union by the former officers' fiduciary breach will in no way implicate the interests of other Union employees who may become judgment debtors in contexts not involving fiduciary breach.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted and the judgment of the Court of Appeals reversed.

Respectfully submitted,

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